



City of Chicago
Rahm Emanuel, Mayor

Department of Law

Stephen R. Patton
Corporation Counsel

Revenue Litigation Division
30 North LaSalle Street
Suite 1020
Chicago, IL 60602-2580

(312) 744-5691
(312) 744-6798 (Fax)

October 29, 2014

Stanley R. Kaminski, Esq.
Duane Morris
190 South LaSalle Street
Suite 370
Chicago, IL 60603
SRKaminski@duanemorris.com

Re: [REDACTED]

Dear Stan:

I am writing in response to your letter of September 12, 2014 (copy attached), requesting a private letter ruling on behalf of [REDACTED] under Uniform Revenue Procedures Ordinance Ruling #3.

Your letter concerns the application of the Chicago Personal Property Lease Transaction Tax ("CTT") and raises four issues. We agree with your conclusions as to all four issues, with the following qualifications:

1. In agreeing to your conclusions, we are not necessarily agreeing with all of your analysis.
2. As to issue #4, we ask that [REDACTED] attempt to use the first sourcing method you describe on the last page of your letter - *i.e.*, "that if it can specifically determine or reasonably estimate the terminal use inside of Chicago, it should use such calculation to determine the CTT due and the DOF will accept any reasonable estimation." If [REDACTED] finds that this method is unworkable, then we will be happy to discuss alternatives at that point.

This opinion is based on the text of the CTT as of the date of this letter and the facts as represented in your letter.

Please let us know if you have questions or need anything further.

Very truly yours,

Weston Hanscom
Deputy Corporation Counsel
Revenue Litigation Division
Department of Law
312-744-9077

cc: Michael Luzzi, Department of Finance
Kim Cook, Department of Law



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FIRM and AFFILIATE OFFICES

STANLEY R. KAMINSKI
DIRECT DIAL: +1 312 499 0105
PERSONAL FAX: +1 312 277 6423
E-MAIL: SRKaminski@duanemorris.com

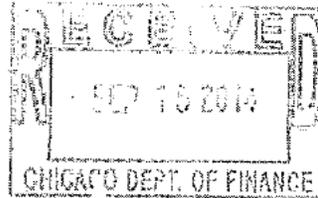
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September 12, 2014

Chicago Department of Finance
Attn: Tax Policy Section
DePaul Center, Room 300
333 South State Street
Chicago, Illinois 60604-3977



Re: Private Letter Ruling Request for [REDACTED]

Dear Sir or Madam:

On behalf of [REDACTED] we hereby request the issuance of a private letter ruling under Section 5 of the Uniform Revenue Procedures Ordinance Ruling Number 3. [REDACTED] is currently registered under and is subject to the Chicago Personal Property Lease Transaction Tax ("CTT") on computer software and computer equipment that it leases for use within the City of Chicago. [REDACTED] also collects and remits the Chicago Transaction Tax to the City of Chicago from the rental of [REDACTED] in the City of Chicago. [REDACTED] is not currently under audit for CTT by the Department of Finance ("DOF"). [REDACTED] headquarters is located at [REDACTED] Chicago, Illinois 60603, and it has facilities located in multiple jurisdictions throughout the United States, including large data operations centers located in [REDACTED] and [REDACTED] Illinois. There are over ten thousand servers located within these centers, which process the work [REDACTED] front, middle, and back office operations.

The purpose of this letter ruling request is to obtain a ruling on the application of the CTT to licenses of computer software acquired by [REDACTED] where said software licenses are exempt from the Illinois Retailers' Occupation Tax ("ROT") and Use Tax, because they meet the five (5) requirements of the Illinois Department of Revenue ROT Software Regulation Section 130.1935(a)(1). [REDACTED] also seeks a ruling on the taxability under the CTT of remote computer services it purchases, such as time-sharing or cloud computing services.

DUANE MORRIS LLP

190 SOUTH LASALLE STREET, SUITE 3700 CHICAGO, IL 60603-3433
DM32932319.2

PHONE: +1 312 499 6700 FAX: +1 312 499 6701

3. Please confirm that where [REDACTED] acquires multiple licenses of the same software for use by its employees and such software is delivered (by download over the internet or otherwise) to [REDACTED] for use in its desktop/laptop computers both inside and outside of Chicago, that the CTT is only due on the portion of the license fees for such software that is located on such computers inside of Chicago during the license period, no matter where remote access, if any, of such software may occur.

4. Please confirm that when [REDACTED] pays for the non-possessory use of computer hardware and software programs or databases (accessed over the internet or otherwise), such as time-sharing or cloud computing, that CTT is only due on the charges paid by [REDACTED] for the non-possessory use of such software:

- a. at [REDACTED] terminals located inside the City of Chicago and not at [REDACTED] terminals located outside the City of Chicago, when terminal use locations can be identified or reasonably estimated by [REDACTED] or
- b. at the primary location of terminal use by [REDACTED] when actual terminal use cannot be identified or reasonably estimated between Chicago and non-Chicago terminal locations; or
- c. at the billing location for such service, when neither the actual nor primary (nor reasonably estimated) terminal use can be identified.

LAW

Under the CTT, a tax is imposed upon the lease or rental in the City of Chicago of personal property, or the privilege of using in the City of Chicago personal property that is leased or rented outside of the City of Chicago. Chgo. Muni. Code, § 3-32-030.A.

The CTT is imposed on both (a) "possessory" leases of personal property, and (b) "non-possessory" leases of personal property. Chgo. Muni. Code, § 3-32-020.I.

Possessory Leases: A possessory lease of personal property is a classic lease or rental situation when the physical possession of the property is transferred. When possession of the property is transferred, the actual possession of such software is the use of such property since possession is the exercise of power over such property. See Chgo. Muni. Code, § 3-32-020.I and 020.R; see also, CTT Ruling Number 8 ("garaging, storing or keeping of the property constitutes use".) Therefore, when a possessory lease of the property occurs, the location of the property while it is being used or operated by the lessee is the location that determines its taxability under the CTT. See similarly, e.g., *Square D Company v. Johnson*, 233 Ill. App. 3d 1070 (1st Dist. 1992) ("use" occurs "where the jet was actually located" and not where corporation could control its use). For example, a leased vehicle garaged in Chicago for 13 hours a day and then operated outside of Chicago by the lessee for 11 hours a day is considered primarily used in Chicago and

subject to the CTT. Similarly, a leased computer solely located in Chicago during the lease period is considered used 100% in Chicago and entirely taxable under the CTT. In such a situation, it is irrelevant that the lessee could also remotely use the computer from his or her home while outside of Chicago. Likewise, a leased printer located solely in Chicago is considered 100% subject to the CTT, even if it can be accessed remotely from outside Chicago to print documents.

Non-possessory Lease: A non-possessory lease of computers or computer software is a special creation of the CTT. Chgo. Muni. Code, § 3-32-020.I. A non-possessory lease expands the reach of the CTT beyond classic leases or rentals. A non-possessory lease occurs where use, but not possession, of personal property transfers to the lessee. Chgo. Muni. Code, § 3-32-020.I. Therefore, this special provision only applies when possession of the leased property stays in the hands of the lessor. As a result, the DOF has established a special rule for determining where “use” occurs for imposing the CTT on such non-possessory leases. Chgo. Muni. Code, § 3-32-020.I. The special rule is quite straightforward and clearly provides that the “location of the terminal or other device by which a user accesses the computer shall be deemed to be the place of lease or rental and the place of use” for CTT purposes. *Id.*; CTT Amended Ruling Number 5, § 2 (“For time-sharing purposes (where the possession of the computer is not transferred), the user of the computer shall be deemed using the computer at the location of the user’s access terminal”); *see similarly*, CTT Ruling Number 9, § 3.

ANALYSIS

Issue 1.

Because the CTT only taxes possessory leases of personal property based on where such property is located when it is used, [REDACTED]’s licenses of computer software where the software is delivered outside of Chicago and possession of the software remains on [REDACTED] computer servers and mainframes located outside of Chicago, are not be taxable under the CTT. This software is always possessed and located, and thus used, by [REDACTED] on its mainframes and servers located outside of Chicago, so no taxable use of such software ever occurs in Chicago. Simply put, when the CTT taxes normal “possessory” leases of personal property, the determination of the taxable use in the City is based on the physical possession and use of the property in the City during the lease or rental period. Therefore, for possessory leases (unlike non-possessory leases) any possible remote use of such property, by a remote terminal or otherwise, is irrelevant to this inquiry, since remote terminal use only applies to “non-possessory leases”. See Chgo. Muni. Code, § 3-32-020.I. (“In the case of a non-possessory computer lease, the location of the terminal or the device . . . shall be deemed . . . the place of use.”). Accordingly, [REDACTED] receipt, exclusive possession and use of the licensed infrastructure and business application computer software at [REDACTED] servers and mainframes located outside of Chicago is not subject to CTT.

Issue 2.

The CTT applies to the possessory lease of computer software delivered and used by [REDACTED] on its desktop/laptop computers and servers located in Chicago. Chgo. Muni. Code, § 3-32-020.I. If delivered into Chicago, such software is taxable under the CTT, (§ 3-32-030.C), unless after the first payment period, the software is removed from Chicago with only incidental use in Chicago. If that occurs, then no CTT will be due for such subsequent payment periods. Chgo. Muni. Code, § 3-32-050.B.

On the other hand, software delivered to [REDACTED] computers and servers located outside of Chicago and that remains outside of Chicago by [REDACTED] on such computers and servers is not subject to the CTT. However, if such software subsequently is moved into the City and used 50% or more within the City during any payment period, such as in the repositioning of a desktop computer or server into the City, or the renewal of a software license where the software covered by the license has moved into the City, the CTT will be due for the payment period such software is present 50% or more of the time in Chicago. Chgo. Muni. Code, § 3-32-050.A:(1) and B.

As in the analysis of Issue 1, any remote terminal use of computers or software acquired in a "possessory lease" is irrelevant to the taxability of the computer or software under the CTT. Chgo. Muni. Code, § 3-32-020.I.

Issue 3.

The CTT is imposed on the lease or rental of computer software in Chicago, or the use of such computer software in Chicago. Chgo. Muni. Code, § 3-32-030.A. When multiple licenses of software are acquired for software to be physically delivered and used both on desktops and laptops located inside and outside of Chicago, the CTT would only apply to the software actually present and used in Chicago. For example, [REDACTED] obtains a license for up to 200 copies of the software (i.e., 200 licenses), in determining the CTT due, only the software downloaded or otherwise installed on computers located in Chicago would be taxable under the CTT. Chgo. Muni. Code, § 3-32-030A; 3-32-050A. and B.

As a result, the CTT would only be due on that the portion of the license fee (i.e., portion of the 200 licenses) for software that is present on such computers in Chicago. Again, since this is a possessory lease of software, any possible remote access to such software is irrelevant to its taxability under the CTT. Chicago Muni. Code, § 3-32-020.I.

Issue 4.

Non-possessory leases of computers and computer software are not taxable at their physical locations, rather such leases are taxable at the terminal locations the lessee uses to access and manipulate such hardware and software. Chgo. Muni. Code, § 3-32-020.I. *See*

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Attn: Tax Policy Section
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similarly, CTT Amended Ruling Number 5; CTT Ruling Number 9. As a result (unlike possessory leases of computers and software) in a non-possessory lease of computers and software, the physical location of the computer and software is irrelevant to the determination of the taxability of the transaction under the CTT.

Here, [REDACTED] enters into agreements for the remote use of computers and computer software applications, sometimes referred to as time-sharing or cloud computer services. [REDACTED] does not obtain possession of such hardware or software, but rather remotely accesses such equipment and software through terminals (*e.g.*, desktops and laptops) located both inside and outside of Chicago.

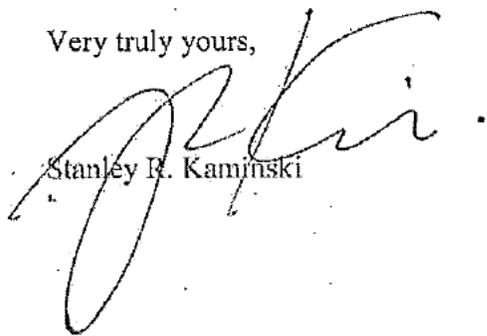
[REDACTED] requests a ruling that if it can specifically determine or reasonably estimate the terminal use inside of Chicago, it should use such calculation to determine the CTT due and the DOF will accept any reasonable estimation. On the other hand, if [REDACTED] cannot specifically identify terminal use or reasonably estimate such use in Chicago, then it can determine the CTT based on where the terminals that primarily use the server are located. And, if the terminal use is so diffused that no reasonable estimation is possible, and it cannot be determined or tracked where the use occurs, then billing location can be used as long as it is clear that the primary use is not at another location. [REDACTED] requests that the DOF confirm that this is an acceptable application of the CTT to such services.

CONCLUSION

[REDACTED] respectfully requests that the DOF issue a private letter ruling confirming [REDACTED] understanding of the application of the CTT to its licenses of computer software discussed herein.

If you have any questions, please do not hesitate to call me.

Very truly yours,


Stanley R. Kaminski

SRK:dmb